

INFORMATION

**AGENDA ITEM:** CLSA Program Transitioning

**ISSUE TO COME BEFORE THE BOARD AT THIS MEETING:** Consideration of request for an Attorney General's opinion concerning CLSA System transition issues.

**RECOMMENDED MOTION FOR CONSIDERATION BY THE BOARD:** I

move that the Library of California Board direct its Chief Executive Officer to request the Attorney General's Office for an opinion on transition issues concerning CLSA Systems as identified in the Library of California Act and the California Library Services Act, and to prepare reports to the Board on the progress of this request and the outcomes resulting from it.

**GENERAL OVERALL PROGRAM UPDATES:**

**CLSA SYSTEM ISSUES**

As the regional library networks have developed and organized, a number of issues have been identified which have required additional information to resolve. Discussions have occurred within the context of regional planning meetings, regional contacts meetings, and a variety of other settings where staff, Board members, and regional participants have dealt with the issues involved with moving the LoC from an act on paper into a functioning program. The CLSA Transition Committee has discussed a number of these issues, and heard from both staff and regional contacts on the issues relative to moving from one act to the other. Of particular concern now is an issue regarding the definition and role of CLSA systems.

Prior to the August Board meeting, applications for LoC membership were received from 5 current CLSA systems. These organizations were and are applying for membership in the Library of California as special libraries. At the time, staff requested an opinion from CSL general counsel Paul Smith. He advised staff that it would take time for him to develop an opinion, so consideration of these 5 membership applications was held over from the August Board meeting.

Following that meeting, staff met again with Paul Smith who advised them that he considered it wise to request an Attorney General's opinion, rather than for him to issue one. This advice centered around what he perceived as the potential for litigation, and his concern that his issuing an opinion would potentially negatively impact any future actions that the Attorney General's Office might need to take.

As a result, staff and Board President Dawe and Vice President Fong deliberated about possible courses of action. It was decided that committee discussion as well as Board discussion should occur as part of the process of developing the scope and contents of the questions to be posed to the Attorney General, as well as to determine if this is the best course of action for the Board to take.

Following is a brief outline of the issues relating to CLSA Systems and LoC Membership. Additional documentation on this topic will be provided prior to the November Board meeting.

**Reimbursement issue:** For many years CLSA systems have participated directly in ILL reimbursement even though they were not public libraries as defined under the Act. At least one system collects ILL reimbursement for rotating book or non-print collections among its member libraries. Because they receive reimbursement under CLSA, they will continue to receive it whether or not they became LoC members, or until CLSA ILL funds are transitioned to LoC. When LoC transitions the CLSA program into its own ILL reimbursement program, it is likely that reimbursements will be for LoC members only. This would exclude CLSA cooperative systems if they were not LoC members.

**Voice in the future of regional development issue:** CLSA systems expect to continue to provide library services in their service areas. The level of their participation in the planning of the regional library networks and the status of some of them as fiscal agents or as network service providers has demonstrated this. If they do not become members of the LoC, they will not have the ability to receive membership benefits. They could provide continued input to the region as an associated entity or as a contractor, but without being a member, they could not serve on the Board or participate in the Council.

**Legal authority and definition of library issue:** Under CLSA and other applicable legislation cooperative systems are not defined as libraries, either public or non-public. However, under joint powers agreements under which most of the CLSA systems are formed, member libraries may delegate to the system the ability to act on their behalf. Because the LoC Act does not recognize cooperative systems specifically as libraries, their membership in the LoC would likely be on the assumption that they are special libraries or information organizations.

Does a cooperative system meet the definition of a special library, information agency, or member library within the guidelines established by the LoC Act? The LoC Act states:

#### **Section 18801 General Provisions**

(9) The special library is a primary source of information and research resources related to its specific mission or the purpose of its parent organization which may be a corporation, hospital, legal organization or other institution.

## **Section 18810 Definitions**

(f) "Information agencies" means institutions that provide or preserve, or both, information resources, such as archives, historical societies, libraries, and museums.

(g) "Institution" means a business or corporation, college, correctional facility, education agency, governmental agency, hospital, not-for-profit organization, professional association, school district, or other organized group that is authorized by law and that operates one or more libraries. These libraries would be academic, school, or special libraries located in California. For the purposes of this act, if an institution is a member of a regional library network and a library of that institution decides to participate in a regional library network and meets the eligibility standards, but is located within the geographic boundaries of a network that is different from the network within which the institution is located, that library shall be a participating library in the regional network within which it is located.

(v) "Special library" means a library that is maintained by a parent organization to serve a specialized clientele; or an independent library that may provide specialized materials or services, or both, in a specific subject to the public, a segment of the public, or other libraries. It is maintained by an association, business or corporation, government agency, research institution, learned society, not-for-profit organization, professional association, museum, industrial enterprise, chamber of commerce, or other organized group and is characterized by its depth of subject coverage.

## **Section 18830 – Eligible Libraries**

18830. (a) Libraries in public library jurisdictions that are members of a regional library network and libraries in institutions that are members of a regional library network are eligible to receive services under this chapter and to become participating libraries. The board of governance or the appropriate administrative authority for each academic library, public library, school library, and special library that decides to join a regional library network shall take official Action to approve network membership. That local governing agency or appropriate administrative authority shall agree not to reduce funding for library services as a result of network participation. Each public library jurisdiction, school district, university or college, and institution or corporation, or agency or branch thereof, may become a member of a regional library network. A public library jurisdiction not a member of the California Library Service Act public library system on the effective date of this section, and an institution, shall have at least one library that agrees to be a participating library and meets the following eligibility standards:

- (1) A written explicit mission statement and service objectives.
- (2) A fixed location in California.
- (3) Established hours of service.
- (4) An organized collection of information and materials accessible for use by its primary clientele.
- (5) Designated, onsite, paid staff for library services. At least one staff person shall have a master's degree in library or information science or a California library media teacher credential issued by the Commission on Teacher Credentialing, but equivalent

graduate education or demonstrated professional experience may be substituted for this requirement. The eligibility determination will be made by the regional library network.

(6) An established funding base.

**Legal documents creating CLSA systems:** In reviewing the issue of CLSA system membership in the LoC, State Library Counsel Paul Smith identified a potential issue related to the legal documents under which CLSA systems were created and to which their members agreed. Depending upon the language in each CLSA system formation documents, there may be a direct reference to the CLSA Act. When the CLSA Act sunsets, systems might lose their legal basis and would therefore need to reorganize if they were to continue as legal entities. Not all CLSA systems were formed as JPA's, so prior to requesting an opinion, all system formation documents would need to be analyzed for potential questions and implications.

Given the significance of the legal formation documents issue and the issue related to the legal status of CLSA systems as libraries under the LoC Act, an Attorney General's opinion regarding the CLSA systems would be more definitive than an opinion rendered by State Library Counsel. Based on the Attorney General's opinion, the Board may choose to seek a legislative remedy by reopening the LoC Act should the opinion identify problems created by language in the LoC Act.

**Recommendation:**

Staff recommends requesting an Attorney General's opinion, and that prior to this request, sufficient detail and information be compiled so that specific questions can be developed for the request. Staff also recommends that the request for an opinion be completed and submitted in a timely manner, to enhance the possibility of a response being received before the end of the fiscal year.

PROVIDING INFORMATION TO REGIONAL LIBRARY NETWORKS

For the August 2000 Board meeting, data was collected and analyzed relating to pension and retirement benefits currently enjoyed by CLSA system staff. In addition there was discussion about issues concerning the development of non-profit organizations and the ability of staff to learn about such organizational structures and operations. Resulting from committee and Board discussions, there was agreement that staff would facilitate gathering of information and expertise on non-profit organization management and schedule training opportunities for regional contacts.

To date, this training has not yet occurred. While a regional contacts meeting was held in October, its focus was on funding regional network operations and not on non-profit management skills and strategies.

Staff will facilitate the gathering of information on this topic and schedule training prior to the February 2001 Board meeting. Currently envisioned is a training session tentatively scheduled for January 18-19, 2001, at the State Library, with the following

agenda topics: nuts and bolts of non-profit management, skills to run non-profit organizations, board selection and management.

**RELATED ISSUES TO COME BEFORE THE BOARD IN THE FUTURE:**

1. Consider programs and services for transitioning to Library of California from CLSA.
2. Consider funding options for CLSA transition to the Library of California.
3. Consider outcomes of a request to the Attorney General on CLSA systems and the LoC and CLSA acts.

Relevant Committee: CLSA Transition  
Staff Liaison: Diana Paque